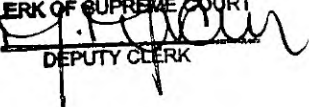


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TERESA BOCK,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION;
KRISTINE NELSON, IN HER
CAPACITY AS ADMINISTRATOR OF
THE EMPLOYMENT SECURITY
DIVISION; AND J. THOMAS SUSICH,
IN HIS CAPACITY AS CHAIRPERSON
OF THE EMPLOYMENT SECURITY
DIVISION,
Respondents.

No. 87231-COA

FILED
AUG 23 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Teresa Bock appeals from a district court order denying a petition for review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

Bock was employed as the Executive Director of the Down Syndrome Organization of Southern Nevada (DSOSN) in May 2020.¹ Due to the COVID-19 pandemic, DSOSN was no longer able to hold in-person events and Bock applied for and received a grant from the government Payroll Protection Plan to fund her position during the early days of the pandemic. This money was later returned when Bock ceased to work for the organization.

On May 6, Bock sent an email to one of her coworkers and stated that she was working with DSOSN's treasurer to draft a resignation letter. Bock and the treasurer were friends. A day earlier, DSOSN's

¹We recount the facts only as necessary for our disposition.

treasurer had sent Bock an email that contained a smiley face and had attached a letter which purported to terminate Bock's employment effective May 15. The termination letter was dated May 5 and signed only by the treasurer. The treasurer then resigned from DSOSN on May 7.

On May 7, the chairman of the board of DSOSN emailed Bock expressing that he was sorry to see Bock leave the organization. Bock replied and asked if she was being fired. The chairman stated that he was not firing her, but he had seen the letter from the treasurer. Bock questioned how the chairman had seen the letter since it was only sent to six people, and he was not one the recipients. Bock went on to call the chairman a coward and stated that she would be cleaning out her office that week. The chairman interpreted this statement as a resignation. May 7 was a Thursday, which gave Bock one additional day to clean out her office that week.

Apparently, Bock did not work in the office on May 8 and returned to work after normal business hours to return her laptop. When she returned, she discovered that the locks had been changed, and she no longer had access to the building. She was able to contact another member of the organization and return her work equipment at a later date.

Bock applied for unemployment benefits and was initially awarded benefits. On her application for benefits, she originally stated that she quit; however, she later stated that she was laid off. When DSOSN was contacted, they reported that Bock voluntarily quit. These conflicting responses appear to have prompted the Employment Security Division of the Department of Employment Training and Rehabilitation (ESD or Division) to investigate the matter. Despite the investigation, Bock began receiving weekly payments of \$342 from the Division.

In March 2021, the ESD sent Bock an email requesting additional information about Bock's claim. Bock reiterated that her employment with DSOSN was terminated as a result of the COVID-19 pandemic. The ESD ultimately found that Bock was not entitled to benefits because Bock voluntarily quit her job. Additionally, because the Division found that Bock was not entitled to receive benefits it also found that Bock had been overpaid benefits in the amount of \$23,039 and required Bock to repay that amount. Bock appealed the Division's decision.

The appeals referee held a hearing on the matter. Both Bock and a representative from DSOSN attended the hearing, provided testimony, and questioned the other side. Both sides also had the opportunity to present the appeals referee with evidence. At the conclusion of the hearing, the referee upheld the Division's decision. Bock appealed this decision to the Board of Review, which, after examining the record, declined to review the matter further.

Next, Bock filed a petition for judicial review. The district court reviewed briefs submitted by the parties and held a hearing on the matter. The court found that the appeals referee's decision was supported by substantial evidence, so it denied the petition for judicial review. Bock now appeals.

Bock primarily argues that the Division erred in denying her benefits because she did not quit her job. She also argues that the Division erred or abused its discretion in determining that she was overpaid unemployment benefits because she was entitled to such benefits or, in the alternative, she honestly believed that she was laid off, so the benefits paid were not an overpayment. We address each argument in turn.

Whether the appeals referee erred when he found that Bock was not eligible to receive unemployment benefits

Bock argues that the appeals referee erred by finding that she voluntarily quit her job and alleges that DSOSN committed fraud by telling the Division that she had voluntarily quit her job.² The Division responds that the referee did not err and carefully considered the evidence before him to arrive at his factual finding that Bock quit her job.

We review decisions regarding unemployment benefits to determine if the agency's decision is supported by substantial evidence to ascertain whether the agency acted arbitrarily or capriciously in reaching its decision. *Clark Cnty. Sch. Dist. v. Bundley*, 122 Nev. 1440, 1445, 148 P.3d 750, 754 (2006). Substantial evidence "is evidence that a reasonable mind could find adequately upholds a conclusion." *Id.* Therefore, this court gives deference to the agency's "fact-based legal conclusions with regard to whether a person is entitled to unemployment compensation." *Id.* A person is ineligible for unemployment benefits if they voluntarily leave their employment without good cause. NRS 612.380(1)(a). Additionally, an employee who voluntarily resigns even in the face of the imminent termination of their job is still considered to have voluntarily resigned under NRS 612.380 and is therefore ineligible to receive unemployment

²Bock also argues that she was not discharged for misconduct, so she should be eligible for benefits. However, as the Division identified in its brief, misconduct was never a ground for finding Bock was ineligible, and it has never been alleged that Bock was discharged for misconduct. Accordingly, we need not consider this argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

benefits. *Dolores v. State, Emp. Sec. Div.*, 134 Nev. 258, 261, 416 P.3d 259, 262 (2018).

Here, we review the appeals referee's decision because the Board of Review declined further review, and we conclude that substantial evidence supports the finding that Bock voluntarily quit her employment. Taking the purported termination letter at face value, Bock's employment was scheduled to end on May 15. When approached about the letter, which appeared to have been written and sent outside of DSOSN's normal procedures, Bock became agitated with the chairman of the board and stated that she would clean out her desk before May 15. It appears that DSOSN interpreted this as a voluntary resignation and changed the locks at the end of business on May 8.³ DSOSN informed Bock that her last day at the organization before her termination would be May 15. Bock then informed the chairman of the board that she would clean out her desk before May 15 after he informed her that he was not firing her when he told her he was sorry to see her leave DSOSN. Bock cleared out her desk on May 7 and attempted to enter the DSOSN office after business hours on May 8 to return her work equipment and files.

We also note that the appeals referee found Bock to be an uncredible witness, concluding that she and the treasurer had colluded to send a fraudulent layoff letter despite Bock's intention to resign, and this court does not reweigh credibility determinations. *See Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (stating that this court does not revisit an appeals officer's credibility

³May 8 was a Friday exactly one week before May 15.

determinations on appeal). Therefore, we will not disturb the appeals referee's findings.

Finally, Bock alleges that DSOSN is committing fraud and made false statements to prevent Bock from receiving unemployment benefits. Bock goes on to argue that this court could alternatively remand this matter to the Division to consider additional evidence because she was not prepared to rebut the misrepresentations made by DSOSN. The Division states that there was no fraud, nor were there misrepresentations. Additionally, the Division argues that Bock received all the evidence two weeks before the hearing and knew she could supplement the record because she did so during the month that the hearing was continued.

Bock fails to identify what statements or evidence produced by DSOSN were fraudulent or misstatements and fails to provide any argument as to how any new evidence she might provide might change the outcome of the hearing. Accordingly, we need not consider her argument. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority); *Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("To establish that an error is prejudicial, the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached."). Additionally, the Division is correct. Bock had the opportunity to present additional evidence before the appeals referee and has not explained why she could not have provided this evidence in the month she had between the first part of the hearing and the final part of the hearing. Accordingly, we conclude that this argument provides no basis for relief for Bock.

Whether the appeals referee erred or abused his discretion when he found that Bock received an overpayment of benefits

Bock argues that either she should have not been found to be ineligible for benefits or, in the alternative, she should be excused from repaying the overpayment because her claim for benefits was not based on fraud, misrepresentation, or willful nondisclosure. The Division responds that Bock misrepresented the facts of the situation when she first applied for benefits; therefore, she must repay the amount she was overpaid.

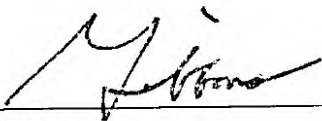
An individual who is overpaid benefits must repay the overpayment unless the overpayment was not caused by "fraud, misrepresentation or willful nondisclosure on the part of the recipient." NRS 612.365(1)(a). This court gives deference to the fact finder's conclusions on mixed questions of law and fact as long as they are supported by substantial evidence. See *Kolnik v. Nev. Emp. Sec. Dep't*, 112 Nev. 11, 16, 908 P.2d 726, 729 (1996). As noted, substantial evidence "is evidence that a reasonable mind could find adequately upholds a conclusion." *Clark Cnty. Sch. Dist.*, 122 Nev. at 1445, 148 P.3d at 754.

As discussed above, substantial evidence supports the finding that Bock was ineligible for benefits. It is undisputed that Bock received \$23,039 in benefits over the course of nearly a year. Additionally, substantial evidence supports the finding that Bock misrepresented her situation to the Division when she applied for benefits, including the hearing officer's finding that the layoff letter was fraudulent and only issued because the treasurer was also resigning. To that end, Bock initially told the Division that she had quit her job before quickly changing her statement and stating that she was discharged. Further, a day after receiving the layoff letter, Bock sent an email to a coworker stating that she was working with DSOSN's treasurer to draft a resignation letter. Bock

had also asked the chairman if she was fired, and he informed her that he was not firing her. Finally, the layoff letter included a termination date of May 15, but she told the chairman that she was going to clean out her office a week before that date. She then cleaned out her office on May 8. Accordingly, we conclude that substantial evidence supports the findings below, and Bock has not established any error or abuse of discretion.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Danielle K. Pieper, District Judge
Kemp & Kemp
State of Nevada/DETR - Las Vegas
Eighth District Court Clerk

⁴Insofar as Bock has raised arguments that are not specifically addressed in this order, we have considered the same conclude that they do not present a basis for relief.